

1 foundation before you ask the question. You can, you can
2 explore it, but let's find out what his basis of his knowledge
3 is before we ask him the -- before he provides conclusions.

4 BY MS. LADEN:

5 Q Okay. Now, let me ask you a little bit about what,
6 what you just testified to. Capitol -- did you just indicate
7 that Capitol had an RCC paging frequency as well as PCP --

8 A Yes.

9 Q -- frequency? And that was -- what was the
10 frequency?

11 A They are licensed on 152.510 megahertz.

12 Q And the frequency for the PCP?

13 A Was 152.480 megahertz.

14 Q Okay. Now, the problem that you just described, how
15 did you determine that they were retransmitting traffic from
16 152.510?

17 MR. HARDMAN: I object, Your Honor. Again, there is
18 no foundation here. The question was how did you determine.
19 It hasn't been established that there was any determination
20 yet, and that's what the earlier objection went to. There's
21 no foundation for any conclusion that Capitol was doing
22 anything.

23 MS. LADEN: Your Honor, I think the point is well-
24 taken. I, I will rephrase the --

25 JUDGE CHACHKIN: All right.

1 MS. LADEN: -- question.

2 JUDGE CHACHKIN: Go ahead.

3 BY MS. LADEN:

4 Q You indicated that you later experienced a problem
5 -- another interference problem?

6 A Yes.

7 Q What was the nature of the transmission on your
8 channel, 152.480?

9 A On the frequency 152.480 megahertz, we were hearing
10 a steady stream of digital traffic from Capitol and we had not
11 previously heard any traffic at all. This was very unusual
12 since it took place all at once and became very busy. We
13 wondered how -- where all this traffic had come from.

14 Q Okay. You -- you wondered where the traffic was
15 coming from?

16 A Because of the overwhelming amount of it so
17 suddenly.

18 Q Okay. And what, what did you do then?

19 A We then took two scanners. We put one scanner on
20 152.510 megahertz. I put it on 152.510 megahertz. I put the
21 other one on 152.480 megahertz. I held one at each side of my
22 head and it sounded like stereo. The transmissions were
23 exactly the same.

24 Q Now, these were transmissions on different --

25 A One was on 152.510 --

1 Q -- frequencies?

2 A -- megahertz, on which Capitol is licensed, and one
3 was on 152.480 megahertz being transmitted by Capitol, and
4 they were the same. They sounded exactly alike, like stereo
5 speakers.

6 Q And what did you -- I, I don't know very much about
7 the paging business. What, what would be the reason for
8 transmitting the same traffic from, from one frequency on
9 another frequency?

10 A There would be no reason --

11 MR. HARDMAN: I object.

12 MR. BOGERT: -- for retransmitting.

13 JUDGE CHACHKIN: Sustained. The answer will be
14 stricken.

15 MR. JOYCE: The basis for the objection, Your Honor,
16 is -- I don't -- I haven't heard the basis for his objection.

17 MR. HARDMAN: It assumes facts not in evidence.
18 There is no foundation for the question that, that Capitol,
19 you know, did anything, again.

20 MS. LADEN: I, I don't think I said Capitol. I
21 think I asked from his expertise in the paging business what
22 the reason would be for transmitting the same traffic --

23 MR. HARDMAN: All right. And, as rephrased, the
24 question is still objectionable because it's not been estab-
25 lished that there was a retransmission from one channel to the

1 other. All there is is testimony that the same signal was
2 heard on two different frequencies.

3 MR. JOYCE: It seems to me it's a perfectly proper
4 question, Your Honor, to ask somebody in the paging business
5 whether or not there's any reason why somebody would -- they
6 -- he just testified that they had the interference problem
7 and the interference problem was stereo signalling of a paging
8 signal. Now, Mr. Hardman has had plenty of opportunities to
9 try to understand how the paging business works when he's been
10 examining his witnesses. I think the FCC is equally entitled
11 to, to understand what was going on here. I don't see how we
12 can understand the -- what, what's going on here unless Ms.
13 Laden can ask this question. I don't understand the basis for
14 Mr. Hardman's objection.

15 MR. HARDMAN: Your Honor, the critical logical flaw
16 in the questioning is that because the same signal is heard on
17 two different frequencies that there is some sort of affirma-
18 tive retransmission. The mere fact that the same signal is
19 heard on two different frequencies by itself doesn't mean
20 anything probative to this proceeding. And what -- and that
21 is a -- obviously a crucial point here which we will be deal-
22 ing with in our direct case. But as the Government questions
23 what this witness saw and heard to insert improper assumptions
24 or logical fallacies in the questioning causes, you know, an
25 improper answer.

1 MR. JOYCE: The, the question is interference. Mr.
2 Hardman can go into on cross-examination whether or not
3 there's any nexus between his testimony and Capitol. But the
4 question pending before this witness are interference and an
5 explanation of what is interference and what isn't. And it,
6 it still strikes me as being a perfectly proper question. I
7 don't understand the basis for Mr. Hardman's objection.

8 JUDGE CHACHKIN: He was being asked the question of
9 what he believes the cause of the -- of the stereo sound was.

10 MR. JOYCE: The question that was pending, I'd be
11 willing to, to have it read back, the question that was pend-
12 ing was do you know of any reason why someone would do that,
13 why you would retransmit RCC traffic onto a PCP frequency.
14 That was the question.

15 JUDGE CHACHKIN: And there's no -- been no
16 establishment of the fact that there was such retransmission.

17 MR. JOYCE: He testified just prior to that that he
18 himself was listening to RCC traffic in one monitor, identical
19 traffic in the other on a PCP frequency. I, I thought Ms.
20 Laden had established the foundation for the next question,
21 which is why would that be happening.

22 MR. HARDMAN: Your Honor, that was not the question.
23 The question was why would someone retransmit, which assumes
24 an explanation that this witness has laid no foundation for
25 and certainly is -- there is no basis in the record for.

1 MR. JOYCE: Well, the, the question could be -- if
2 retransmission, if that's the assumption that bothers Mr.
3 Hardman, the question could be reformulated without that, and
4 I believe Ms. Laden would, would arrive at the same point,
5 which is to find out --

6 JUDGE CHACHKIN: Well, let's find out --

7 MR. JOYCE: -- why --

8 JUDGE CHACHKIN: -- from -- Ms. Laden is asking the
9 questions. I, I've -- as far as that particular question,
10 where there was an objection I sustained the objection. I,
11 I'm not preventing Ms. Laden from pursuing the matter. It was
12 that particular question.

13 BY MS. LADEN:

14 Q Okay. Mr. Capehart, you indicated that you heard
15 the signals from the two frequencies at the same time.

16 A Yes.

17 Q What did you hear?

18 A I heard identical traffic on, one on 152.510 mega-
19 hertz and one on 152.480 megahertz, occurring at exactly the
20 same time, one in each ear.

21 Q And what did you conclude as a result of hearing
22 that?

23 MR. HARDMAN: Your Honor, I --

24 JUDGE CHACHKIN: I'll sustain the objection to his
25 conclusion. His conclusion is irrelevant. He could testify

1 about what he heard, what he did. That's the facts he could
2 testify to. What his conclusion is, is, is -- can't be the
3 basis for, for a determination under the issues.

4 BY MS. LADEN:

5 Q Mr. Capehart, in your experience in the paging
6 business, have you ever, before that instance, have you ever
7 heard the same traffic on an RCC frequency and a PCP
8 frequency?

9 A Occurring simultaneously like I did?

10 Q Yes.

11 A No, I have never heard that before.

12 Q Did you take any steps to verify the source of the
13 signals?

14 A Once I had heard the two signals, each on those
15 frequencies that were licensed to the same entity, I, I went
16 one step further and assumed that they were transmitting both
17 those. It would be very difficult for someone to --

18 MR. HARDMAN: I object, Your Honor.

19 MR. BOGERT: -- to clearly --

20 JUDGE CHACHKIN: Sustained. It's not responsive to
21 the question. The remainder is stricken. You asked the
22 question. He answered. Let's proceed.

23 BY MS. LADEN:

24 Q Did you complain to Capitol as a result of that --
25 those problems?

1 A Yes. Mr. Moyer did.

2 Q Did that -- how long did that -- did you, did you
3 experience that other times? In other words, how long did
4 you --

5 A That stopped. It was too easy to detect.

6 Q And when was the last incident of that kind of --
7 same traffic on both frequencies?

8 A Of that type, it -- directly being sent out, at, at
9 that time it stopped and did not occur again of that type of,
10 of activity. A little different later on.

11 Q And, and when was that that it's -- that that
12 activity stopped?

13 A When we called and --

14 Q Were there other instances of problems sharing the
15 frequency?

16 A Yes. The next instance was we started hearing the
17 series of four two-tone pages transmit 24 hours a day, seven
18 days a week, for weeks and even over a month once, and we
19 complained about that.

20 Q And when was that?

21 A I'm not sure of the date.

22 Q And did you complain to Capitol about that?

23 A Yes. And we complained, I think, through our
24 attorney and we were told that they were doing testing.

25 Q And was -- were there other instances of problems

1 sharing the frequency after that?

2 A After the Field Operations Bureau came to town, the
3 interference that I was describing just previously stopped and
4 the form of interference took on a more sophisticated --

5 MR. HARDMAN: I object, Your Honor.

6 JUDGE CHACHKIN: I'll, I'll sustain the objection to
7 the word sophisticated. Just testify about what you did, what
8 you saw.

9 MR. BOGERT: The, the next experience we had with
10 harmful interference was we had a problem with a cap code that
11 kept going off one of our pagers that our people was carrying,
12 customer was carrying. It kept going off and we couldn't
13 explain why. I asked one of our engineers to investigate and
14 through his investigation he discovered that it was a cap code
15 that was being transmitted by Capitol Paging but that that cap
16 code was also being transmit first on their RCC frequency.
17 Every time it was sent on the PCP frequency, it had previously
18 to that just a few minutes been sent on the RCC frequency,
19 152.510. We investigated further with that by using an in-
20 strument called a Hark verifier. That's an instrument that
21 you can connect to a radio frequency receiver and it will give
22 you a printout, if you hook up a printer to it, of the pages
23 that are coming over that frequency. It reads out the day,
24 the date, the, the time, the cap code of the pager, and the
25 message that has been sent in the pager; if it's a numeric

1 | page, the, the number that was transmitted to the, to the
2 | digital pager, or if it's an alpha page, a -- an actual alpha
3 | message. That was in about October of '92, I think, that we
4 | did testing with the two Hark verifiers, and we discovered at
5 | that time that there were many pages being sent out on the
6 | 152.480 frequency that had previously been sent out on the
7 | 152.510 frequency, all digital pages.

8 | BY MS. LADEN:

9 | Q In other words, the pages were going -- had the same
10 | cap code?

11 | A The same cap code and the same message inserted into
12 | the -- which led us to believe that they were identical pages
13 | that were being retransmit.

14 | Q And what is a cap code exactly?

15 | A A cap -- all the pagers on a system are on the same
16 | frequency and they each have an identifying cap code in their
17 | different, their different formats for this: Goolay (phonetic
18 | sp.), Poxide (phonetic sp.), two-tone sequential. When the
19 | transmission is sent, the message that you want to get through
20 | to the person is, is, is -- first, we send the cap code, which
21 | alerts the pager that this message is for that particular
22 | pager, and then the message comes behind that cap code.

23 | Q So, if two messages have the same cap code, then the
24 | two messages were going to the same pager. Is that right?

25 | A No, because they were being transmitted on a

1 different frequency, and I have no explanation for that.

2 Q Now, you just indicated that the -- this monitoring
3 that you did, that it produces a printout?

4 A Yes.

5 Q Did you look at those printouts?

6 A Yes, I did.

7 Q Do you know the -- where those printouts are and do
8 you --

9 A Yes. We have those printouts in our possession.

10 Q You have them?

11 JUDGE CHACHKIN: Mr. Hardman, have you seen the
12 printouts?

13 MR. HARDMAN: No, I haven't, Your Honor.

14 JUDGE CHACHKIN: Have you asked for them?

15 MR. HARDMAN: I asked for all documents that support
16 the various claims that -- I mean, that's if the -- in summary
17 fashion -- that the, the Government either had or knew about.
18 I was told in response that I had everything they had and that
19 they would, if they found anything further, supply it to me,
20 and they have not. And I certainly am going to object to any,
21 you know, discussion or reference to any documents of this
22 sort.

23 MS. LADEN: Your, Your Honor, I should make it very
24 clear we do not have those printouts in our possession.

25 JUDGE CHACHKIN: Where are they?

1 MS. LADEN: I just saw them --
2 MR. JOYCE: I have them, Your Honor.
3 MS. LADEN: -- for the first time this morning here.
4 JUDGE CHACHKIN: Do you want to see them, Mr.
5 Hardman?
6 MR. HARDMAN: Thank you.
7 JUDGE CHACHKIN: -- before you --
8 MR. HARDMAN: Yes, I do, Your Honor.
9 JUDGE CHACHKIN: -- cross-examine the witness?
10 MR. HARDMAN: Absolutely, Your Honor. I --
11 JUDGE CHACHKIN: All right.
12 MR. HARDMAN: -- I --
13 JUDGE CHACHKIN: Mr. Joyce will make them available
14 to you for you to review.
15 MR. HARDMAN: May I inquire when the Government
16 learned of the existence of these printouts and --
17 MS. LADEN: Your Honor, we learned that there had
18 been -- that the test had been done, that it had produced
19 printouts, about -- when we interviewed Mr. Capehart and, and
20 other witnesses about two or three weeks ago.
21 JUDGE CHACHKIN: Why didn't you --
22 MS. LADEN: I --
23 JUDGE CHACHKIN: -- make an attempt to secure the
24 printouts and turn them over to Mr. Hardman if you were going
25 to use them?

1 MS. LADEN: The first witness who mentioned the
2 printouts was someone who's no longer employed by RAM. They
3 indicated to us that they would try to find the printouts.
4 And I first saw the printouts this morning, Your Honor.

5 MR. HARDMAN: Your Honor, it seems to me that the
6 existence of the printouts fairly should have been disclosed
7 to me under the interrogatories and their document production
8 requests that I made on behalf of Capitol, and a delay of
9 three weeks, which effectively doesn't give me any time to do
10 any, any preparation on it, is certainly unfair and
11 prejudicial.

12 MS. LADEN: Your Honor, I, I want to make clear that
13 we did not know that the documents -- that the -- the -- the
14 witness that we first interviewed did not have the printouts
15 in his possession. He's no longer employed at RAM. We were
16 told that they were -- that they had existed, that they had
17 seen them.

18 JUDGE CHACHKIN: You didn't --

19 MS. LADEN: I did not see them until this morning.

20 JUDGE CHACHKIN: But did you ask -- you didn't
21 determine from Mr. Capehart about these printouts three --

22 MS. LADEN: I asked --

23 JUDGE CHACHKIN: -- weeks ago?

24 MS. LADEN: -- Mr. Cape-- we discussed the question
25 of the printouts and I -- my recollection is that we asked Mr.

1 Capehart to try to locate them. I -- that is my recollection.
2 But I did not see them or know that they still existed until
3 this morning.

4 MR. HARDMAN: Your Honor, it seems to me that this
5 is a case where the Government did not exercise due diligence
6 and, and, you know, at a minimum didn't exercise any diligence
7 to, to avoid putting itself in the position of having to
8 disclose these documents. I, I cannot accept that having been
9 on notice three weeks ago that, that these documents existed
10 and failing, if I'm understanding what Ms. Laden says, failing
11 to, to make the necessary inquiries to, to determine their
12 whereabouts and, and if they still existed until this morning.
13 It's, it's incredible.

14 JUDGE CHACHKIN: Well, I agree with you that you
15 should have been shown these printouts earlier to prepare
16 yourself and I have two choices. One is not to allow any
17 testimony about the printouts, and I don't know what the
18 testimony is going to be. Do you intend to, to utilize these
19 printouts now that --

20 MS. LADEN: Your Honor, I will -- consistent with
21 your ruling, I would not use them. I -- the Hark verifier,
22 the monitoring that was done with the Hark verifier which
23 produced the printouts, is discussed in a declaration, I
24 believe it's Mr. Blatt's Declaration, which was attached to a
25 pleading filed by RAM months ago, which Mr. Hardman received a

1 | copy of, was served with a copy of. The monitoring with the
2 | Hark verifier itself, Mr. Hardman has known about for months.
3 | The print-- we are not going to rely on the printout. We are
4 | going to examine the -- and we never were. We are going to
5 | examine the witnesses on the basis of what they observed
6 | during their monitoring. And I would like to inquire as to
7 | that, and that part of it is certainly -- Mr. Hardman has been
8 | on notice about for months.

9 | MR. HARDMAN: Your Honor, the, the -- Ms. Laden is
10 | absolutely right. We knew that, that the -- RAM claimed to
11 | have a Hark verifier which it used to monitor the frequency,
12 | but a, a printout of this type is not, you know, necessarily a
13 | part -- I mean, the Hark verifier, the Hark verifier itself
14 | doesn't do this, only if you can do more than just a Hark
15 | verifier can -- is it possible to produce the data of this
16 | sort.

17 | JUDGE CHACHKIN: Well, they're not introducing the
18 | data. You can use it if you wanted for purpose of cross-
19 | examination, but they're not introducing it.

20 | MR. HARDMAN: Did I understand Ms. Laden to say that
21 | they're, they're not going to rely on it in any way?

22 | JUDGE CHACHKIN: That's what I understand.

23 | MS. LADEN: We're not going to rely on the printouts
24 | if we're not, if we're not allowed to, if that's the ruling,
25 | but we are -- we do want to cross-examine the -- we do want to

1 examine the witnesses that did the hark -- monitoring with the
2 Hark verifier. We will not introduce the printouts into the
3 record if, if that's Your Honor's ruling.

4 JUDGE CHACHKIN: Well, was it your intention to
5 introduce them, the printouts?

6 MS. LADEN: We're not going to develop them this
7 morning.

8 JUDGE CHACHKIN: Well, then you're in no position to
9 introduce them either, are you? You haven't reviewed --

10 MS. LADEN: If they're marked --

11 JUDGE CHACHKIN: -- them yourself.

12 MS. LADEN: I don't even have them here. They're
13 marked RAM exhibits. We discussed whether RAM would introduce
14 them, whether we would introduce them. I saw them this morn-
15 ing and they are in the possession of counsel for RAM, and
16 they're marked RAM exhibits.

17 MR. JOYCE: RAM Exhibit 1 and 2 for purposes of
18 identification.

19 JUDGE CHACHKIN: Why weren't they exchanged? Why
20 didn't RAM exchange this material prior to the hearing?
21 RAM --

22 MR. JOYCE: I too, Your Honor, haven't --

23 JUDGE CHACHKIN: -- is a Party. Why didn't RAM --

24 MR. JOYCE: I didn't see these this morning. I
25 haven't determined yet that I have any plans of moving for the

1 admission of --

2 JUDGE CHACHKIN: Well, I --

3 MR. JOYCE: -- these that's --

4 JUDGE CHACHKIN: -- I will not allow them to be
5 offered as direct examination by RAM since RAM was a Party and
6 dates were set for exchange of exhibits.

7 MR. JOYCE: Yes. You've already made it clear, Your
8 Honor, that these are not my direct witnesses, so --

9 JUDGE CHACHKIN: You could have put in a direct
10 case.

11 MR. JOYCE: I know, and I, I haven't. So, we're,
12 we're not arguing this point.

13 JUDGE CHACHKIN: All right.

14 MR. JOYCE: You know, I presume that I'm free to, to
15 use this for purposes of cross-examination just as Mr. --

16 JUDGE CHACHKIN: You're not free to use them for
17 purpose of cross-examination. You had an opportunity to
18 exchange it and I'm not going to permit you to cross-examine.
19 If something comes up, if Mr. Hardman should question the
20 witness -- I don't know if it will come up, but if Mr. Hardman
21 should use the printouts, then it would be permissible for the
22 other Parties to use it. But if Mr. Hardman doesn't use it, I
23 won't permit anybody to use the printouts at this point.

24 If Mr. Hardman needs to use it to impeach the
25 witness and he uses it, then the other Parties are free to use

1 it. But the ball is in Mr. Hardman's court under the circum-
2 stances. These printouts should have been exchanged if RAM
3 intended to use them.

4 MS. LADEN: Your Honor, I was not planning -- in
5 view of your ruling yesterday about the declaration of Mr.
6 Moyer, I had not planned to offer the declaration of Mr.
7 Capehart.

8 JUDGE CHACHKIN: All right.

9 MS. LADEN: But because of the discussion that we
10 have just had about the Hark verifier, I just want to double-
11 check whether his declaration mentions the Hark verifier and
12 I'd like to offer it.

13 MR. HARDMAN: Which declaration are you talking
14 about?

15 MS. LADEN: I'm looking for it. Mr. Capehart's
16 declaration.

17 JUDGE CHACHKIN: Well, you could ask him questions
18 about it. He's here.

19 MS. LADEN: I have, Your Honor.

20 JUDGE CHACHKIN: Well, do you have any more ques-
21 tions to ask him covered in the declaration? If you want to
22 ask them, you could ask them. There's no need to put in the
23 declaration.

24 MS. LADEN: Your Honor, the reason I would put in
25 the declaration is because of the accusation that we have not

1 | disclosed this, this matter before this moment and --

2 | JUDGE CHACHKIN: Well, it's not a question of
3 | whether you disclosed it. The question is the printouts were
4 | not provided. That's the question. If, if you intended to
5 | rely on the printouts or, or RAM intended to rely on the
6 | printouts, they should have been provided prior to the hearing
7 | so --

8 | MS. LADEN: We did not, we did --

9 | JUDGE CHACHKIN: -- Mr. Hardman could conduct some
10 | kind of examination --

11 | MS. LADEN: We did not --

12 | JUDGE CHACHKIN: -- to determine the accuracy of the
13 | printouts.

14 | MS. LADEN: We didn't intend to rely on the print-
15 | outs, Your Honor.

16 | JUDGE CHACHKIN: All right then.

17 | BY MS. LADEN:

18 | Q You have customers that purchase your paging service
19 | on your PCP, is that correct?

20 | A Yes.

21 | Q In your experience, would a PCP customer also have
22 | paging done through an RCC?

23 | A The only time I know where that would occur is if
24 | the person needed to go outside of the coverage area and have
25 | a separate pager with another company that might be an RCC --

1 might use an RCC frequency.

2 Q I wonder, Mr. Capehart, if you would look -- I think
3 it's that white book there in the, in the corner of the desk.

4 A This one?

5 Q Yes.

6 A Okay.

7 Q If you would turn to PRB Exhibit 8, please? And if
8 you would turn to page 3.

9 A Okay.

10 Q Do you recognize that document?

11 A Yes.

12 Q And if you could turn to page 4, is that your
13 signature?

14 A Yes, it is.

15 Q Okay. Do you remember submitting this -- do you
16 remember what the reason was for this document?

17 A Yes.

18 Q And what was that?

19 A The reason was the -- we were experiencing harmful
20 interference from Capitol Paging. They were transmitting
21 their call sign over the top of our pages on 152.480
22 megahertz.

23 Q And what was the person -- purpose of this -- what
24 was this document prepared for?

25 A It was prepared to go along with a statement from

1 | our attorney stating that we were objecting to their
2 | transmitting --

3 | Q Okay.

4 | A -- over the top of our --

5 | Q And who was the --

6 | A -- pages.

7 | Q Where was that statement -- where did that statement
8 | go? Who was that statement for?

9 | A That went to Rick Joyce, our attorney.

10 | Q Okay. When this --

11 | A And it was then forwarded to Carol Foelak with a
12 | letter.

13 | MS. LADEN: Okay. Your Honor, at this time I'd like
14 | to offer PRB Exhibit 8.

15 | JUDGE CHACHKIN: For what purpose?

16 | MS. LADEN: Your Honor, I would like to show that
17 | this document was attached to a document that was filed with
18 | the Commission.

19 | JUDGE CHACHKIN: But that -- are you offering it for
20 | the truth of the matters contained in it?

21 | MS. LADEN: No, Your Honor. No, Your Honor.

22 | JUDGE CHACHKIN: Just for the fact that a, that a --

23 | MS. LADEN: Just for the fact --

24 | JUDGE CHACHKIN: -- complaint was filed?

25 | MS. LADEN: Exactly.

1 JUDGE CHACHKIN: For that limited purpose, any
2 objection to that limited purpose?

3 MR. HARDMAN: No, Your Honor.

4 JUDGE CHACHKIN: All right. For that limited
5 purpose, your Exhibit 8 is received.

6 (Whereupon, the document marked for
7 identification as PRB Exhibit No. 8
8 was received into evidence.)

9 MS. LADEN: Thank you, Your Honor. I have no
10 further questions.

11 MR. HARDMAN: -- clarification, Your Honor. Exhibit
12 8, did you mean to include a covering letter --

13 JUDGE CHACHKIN: I understand the entire objection
14 -- entire exhibit is being offered just to show that a com-
15 plaint was filed to the FCC, not for the truth of any of the
16 matters contained therein.

17 MR. HARDMAN: Very well, Your Honor.

18 JUDGE CHACHKIN: And for that limited purpose, I
19 received the exhibit. Mr. Joyce, do you have any questions?

20 MR. JOYCE: Yes, Your Honor.

21 JUDGE CHACHKIN: Before we begin, let's take our
22 luncheon recess till 1:30.

23 (Whereupon, at 12:28 p.m. the hearing was in recess
24 until 1:30 p.m.)

25

1 A F T E R N O O N S E S S I O N

2 JUDGE CHACHKIN: Mr. Joyce?

3 MR. JOYCE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. JOYCE:

6 Q Mr. Capehart, I wanted to clarify a few dates with
7 you. You've been with RAM Technologies since when?

8 A For eight years in March.

9 Q Subtract for me. So, that's --

10 A Oh, '76, I believe.

11 Q All right. So, you've been with RAM since --

12 A '86. I'm sorry.

13 Q '86. I'm glad I asked you to do the arithmetic.

14 So, you've been with RAM since it started up its Private
15 Carrier Paging operation. Is that --

16 A Yes.

17 Q -- correct? Okay. I believe you testified that
18 your, your title now involves being in charge of sales folks
19 and, and such. Are you also responsible for, for some techni-
20 cal aspects of the operation?

21 A Yes.

22 Q Okay. And you -- so, you're, you're familiar with
23 how PCP systems work and all that kind of thing?

24 A Yes, I am.

25 Q Okay. When people are talking about monitoring and

1 all that, that those are areas that you're familiar with?

2 A Yes, I am.

3 Q Did you ever do that sort of thing while you, while
4 you've been working with RAM, do monitoring of transmissions?

5 A Yes.

6 Q It -- is it, is it fair to say that your knowledge
7 of PCP operations is on-the-job from, from working at RAM
8 Technologies?

9 A Yes, it is.

10 MR. HARDMAN: Your Honor, can we have a clarifica-
11 tion, since this is a witness from Mr. Joyce's client? How
12 much leading can he do of this witness?

13 JUDGE CHACHKIN: I'm not going to permit leading
14 questions. I think you're correct. You have an unusual
15 situation, and this is a principal of Joyce's client. So,
16 we're -- I'll not permit leading questions.

17 MR. HARDMAN: Thank you.

18 BY MR. JOYCE:

19 Q To clarify some of the dates and when they happened
20 again, Mr. Capehart, if I could go back with you briefly,
21 approximately when did you first determine that interference
22 was occurring to RAM's PCP operations?

23 A This is the end of 1990.

24 Q End of 1990?

25 A Yes.

1 Q And how did you determine that?

2 A We were monitoring the frequency 152.480 and we
3 heard a steady stream of digital transmissions that were not
4 of our origin. We wondered where such a large amount of
5 digital traffic came from so quickly. And we investigated and
6 that's when we discovered that they were being transmitted by
7 Capitol Paging on 152.480 megahertz and the same traffic was
8 being transmitted on 152.510 megahertz.

9 MR. HARDMAN: Your Honor, I'm going to object to the
10 -- and ask that the answer, answer be stricken insofar as it
11 refers to Capitol transmitting on, on the, on the two
12 frequencies. Again, that's -- that, that is not -- was not
13 the witness's testimony and it was not responsive to the
14 question asked.

15 MR. JOYCE: I, I disagree. I think he's expanded
16 upon my question, and I believe he did testify this morning
17 that he had identified the source of it. My question is to,
18 to focus on when these events were occurring and he's simply
19 reminding us of when it occurred.

20 MR. HARDMAN: Well, Your Honor, we had long argument
21 this morning about the foundation for the -- that it was
22 Capitol doing anything. What the testimony was that this
23 witness heard was the same signal simultaneously on 152.51 and
24 152.480. There was never any foundation laid as to the reason
25 or, or a source of that duplicate transmission or any founda-